IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGNAL CIVIL JURISDICTION

Review Petition No. 5 of 2007
in
Writ Petition No.3189 of 2006

The Property Owners' Association — Petitioners. (Orig Intervener)

vs

Joseph Bain D'Souza & Ors. — ..Respondents (Orig. Petitioners)

and

State of Maharashtra and Ors. — ..Review Respondents

Mr. Devrajan i/b M/s Vimadalal & Co for the Petitioners.
Mr. Gautam Patel i/b Thakore Jariwala & Associates for Respondent Nos 1 to 3 (Original Petitioners)
Mr. Ravi Kadam, Advocate General with Mr. G.W. Mattos, AGP for State and MHADA.
Mr. K.K.Singhvi, Senior Advocate with Ms Shobha Ajitkumar for BMC.

CORAM: H.L.GOKHALE, Acg C.J. ,
& J.P. DEVADHAR, J.
DATE: FEBRUARY 5, 2007.

P.C.:-

Heard Mr.Devrajan in support of the Review Petition. We have also heard the learned counsel appearing for the respondents as well as the learned Advocate General appearing for the State and MHADA and Mr.Singhvi, Senior Advocate appearing for the Municipal Corporation.

2. This review petition filed by the Property Owners' Association seeks that we should recall our order passed on 11th December 2006 and the subsequent clarification given on 21st December 2006 on this PIL and dismiss the same. This petition was remanded to this court by the Apex Court for determination on two issues i.e. the Constitutional validity of D.C. Regulation 33(7) and the maintainability of the writ petition. We have rendered our judgment dated 11th December 2006 accordingly. Subsequently a clarification has been given on certain aspects on 21st December 2006.

3. Mr. Devrajan appearing for the applicants submits that some of the submissions of the Property Owners' Association, which opposed this PIL, have not been considered. The PIL was defended by the learned Advocate General for the State and Maharashtra Housing and Area Development Authority, and by Shri Singhvi, Senior Advocate appearing for the Municipal Corporation. Since the validity of the concerned D.C. Regulation was under challenge, the various interveners and respondents, were also heard at length. They had submitted their written submissions. In paragraph 9 of our judgment there is a reference to the written submissions filed by various such respondents and interveners and we have

considered all the material as also the submissions of the learned counsel appearing for all of them as well as those of one intervener who was appearing in person. In paragraph 44 we have mentioned specifically that Mr. Devrajan had appeared for the Property Owners' Association and that he had been heard.

4. Mr. Devrajan, learned counsel appearing for the Property Owners' Association submits that a few submissions on maintainability of the petition have not been dealt with. He has referred to us to the judgment of the Apex Court in Vinoy Kumar vs State of U.P – 2001(4)SCC 734 wherein the Apex Court has held that even in cases of public interest the court can exercise writ jurisdiction at the instance of a third party when it is shown that a legal wrong or legal injury is threatened and that such person or determined class of persons is, by reason of poverty, helplessness of disability or socially or economically disadvantaged position, is unable to approach the court for relief. In the present case we were concerned with the interpretation of a Development Control Regulation, where, amongst others, the petitioners themselves felt aggrieved by the approach concerning it adopted by the State Government and the Municipal Corporation. This being the position in our

view the ratio in that judgment would not get attracted to the present case.

5. The second judgment which was referred to by Mr. Devrajan is in the case of Guruvayoor Devasom Managing Committee vs C.L. Rajan 2003 (7) SCC 546 wherein the Apex Court has held that where a segment of the public is not interested in the cause, a public interest litigation would not ordinarily be entertained. It is submitted that the property owners are opposed to this petition and therefore, a segment of the public is opposed. It is not possible to accept this submission. What the proposition lays down is that normally the petition should be for the benefit of the entire society. The petition is filed with such an objective and therefore, can not be rejected on that ground. The third judgment which was referred to is in the case of A.V. Venakateshwaran vs R.S. Wadhwani AIR 1961 SC 1506. Based thereon it was submitted that if a writ petition itself would not lie, there was no occasion to file a PIL. In our view present petition is one where a writ would be maintainable and therefore, there was a clear case for filing a PIL. In our view the petition could not be thrown out on any of the propositions which are sought to be canvassed.

6. We have gone through the review petition. Here we were concerned with the interpretation of the relevant Development Control Regulation and we have discussed the same at length and given our reasons for the conclusion that we have arrived at. The other challenges to the maintainability of the petition were on the basis of delay and laches in presenting the same. These submissions have been considered specifically at length in our judgment. There is, therefore, no reason to recall the order that we have passed.

Review petition is dismissed.

ACTING CHIEF JUSTICE

J.P.DEVADHAR, J.